Washington Hospital Center *and* Service Employees International Union, Local 722, AFL–CIO. Case 5–CA–15087

30 April 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

On 16 December 1983 Administrative Law Judge Irwin Kaplan issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a reply brief.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Washington Hospital Center, Washington, D.C., its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] In his reply brief the General Counsel moves to strike a reference in the Respondent's brief to a certain document and certain other documents appended to the Respondent's brief. The General Counsel contends that the documents have not been made part of the record in this proceeding and have not been shown to constitute newly discovered evidence. We find merit in the General Counsel's contention and hereby grant the motion to strike.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] In concluding that the Respondent violated Sec. 8(a)(5) and (1) of the Act by refusing to provide the Union with certain job evaluation information that the Union had requested, the judge relied, inter alia, on *Dynamic Machine Co.*, 221 NLRB 1140 (1975). The judge's reliance on *Dynamic Machine* is misplaced since that case did not involve job evaluation data. This error does not affect our decision.

DECISION

STATEMENT OF THE CASE

IRWIN KAPLAN, Administrative Law Judge. This case was heard in Washington, D.C., on May 11, 1983. The underlying charges were filed on February 2, 1983, by Service Employees International Union, Local 722, AFL-CIO (the Charging Party or the Union), which charges gave rise to a complaint and notice of hearing on March 17, 1983, alleging that Washington Hospital Center (Respondent) engaged in conduct violative of Section 8(a)(5) and (1) of the National Labor Relations Act.

The gravamen of the complaint is that Respondent violated the Act by refusing to furnish the Union, on request, "The relevant findings and/or recommendations of the Hayes/Hill study or any other job analysis dealing with [the] classification of unit clerks." In connection therewith, it is further alleged that this information is "necessary" and "relevant" to the Union in the exercise of its responsibilities as the exclusive collective-bargaining representative for said unit clerks.

Respondent filed an answer conceding, inter alia, jurisdictional facts, labor organization, appropriateness of the unit (as amended at the hearing), the Union's exclusive status as bargaining representative, and that the information in question (herein the Hayes/Hill study) was in fact requested but denying all allegations that it committed any unfair labor practices. In this latter regard, Respondent denies that the information sought is "necessary" or "relevant" to the Union's responsibilities as bargaining agent either under the collective-bargaining agreement or otherwise.

On the entire record, including my observation of the demeanor of the witnesses, and after careful consideration of the posttrial briefs,[1] I find as follows.

[1] By motion to strike dated July 12, 1983, the General Counsel moved that "certain parts" of Respondent's brief be stricken "in that they include information and material which was not duly entered into the record." This material pertains principally to the authority of business agent *Ben Elliott* to represent the Union as of May 6, 1983. According to Respondent, Union President *Michael Smiley* dismissed *Elliott* approximately 5 days before the opening of the instant trial. The motion pertains to that part of Respondent's brief and attachments (App. A, B, and C) dealing with *Elliott's* status. The record disclosed that Elliott filed the instant underlying charges on behalf of the Union (G.C. Exh. 1(a)) and made an unopposed appearance for the Union at the hearing on May 11, 1983. Further, it is noted that Respondent did not raise the issue of Elliott's status either in its answer or in its opening statement. While Respondent's attorney attempted to cross-examine *Elliott* regarding his status at the time of trial, I was unpersuaded that he articulated sufficient foundation or that it was otherwise material, given the allegations in the complaint of unlawful refusal to furnish information months earlier. Accordingly, I sustained the objection thereto. Respondent also contended that over a period of time it had furnished President *Smiley* with sufficient information about the Hayes/Hill system, the subject of the instant case, to enable the Union to adequately represent the bargaining unit. In an undated motion in "Opposition to General Counsel's Motion to strike," Respondent stated that the disputed material was not submitted for the truth of its contents but rather in furtherance of its offer of proof that *Elliott* does not represent the Union and that he was estranged from *Smiley*. Respondent urged a negative inference be drawn from the failure of the General Counsel to call *Smiley* as a witness. Further, Respondent moved for "judicial notice" to be taken of the Regional Director's letter dated for July 18, 1983, dismissing charges in another case (Case 5–CA–15457) involving the same parties. The Regional Director noted in his dismissal letter, inter alia, that *Elliott's* official position with the Union at that time was still the subject of an internal union dispute. While "judicial notice" is hereby granted, this falls far short of establishing that Respondent was free to ignore *Elliott's* request for information when he unquestionably had authority as encompassed by the complaint. The fact that Respondent may have given the information to *Smiley* or was willing does not relieve it of its bargaining obligation. See *Procter & Gamble Mfg. Co. v. NLRB*, 603 F.2d 1310, 1317 (8th Cir. 1979). Further, in the absence of any showing that the General Counsel had greater access to *Smiley* than Respondent, I find no negative inference is warranted by the failure to call him as a witness. See *Wayne Construction*, 259 NLRB 571 fn. 1 (1981). In the total circumstances of this case, and absent any claim of

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I. JURISDICTION

Respondent, a Delaware corporation, is engaged in the business of operating and maintaining a nonprofit hospital in Washington, D.C. In connection with the aforenoted business operations, Respondent, during the past 12 months, a representative period, has received gross revenues in excess of $1 million and has purchased and received at its facility materials and supplies valued in excess of $50,000 directly from points located outside the District of Columbia. It is alleged, Respondent admits, and I find that the Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondent admits, and I find, that Service Employees International Union, Local 722, AFL-CIO is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background and Sequence of Events*

Respondent employs approximately 4000 individuals at its hospital facility in Washington, D.C. The Union, which represents at the hospital some 1200 of Respondents employees including approximately 125 unit clerks (the group primarily involved herein), was certified as the exclusive bargaining agent on March 31, 1975.[2] The most recent collective-bargaining agreement between the parties, by its terms, is effective September 20, 1981, to October 6, 1984.[3] (G.C. Exh. 2.)

In late 1979, Respondent commissioned Hayes/Hill Incorporated (Hayes/Hill), a Chicago based management consulting firm, to undertake a comprehensive study (Hayes/Hill study or the study) in order to establish, inter alia, "a consistent and comprehensive job classification and compensation plan." (G.C. Exh. 6.) In conjunction therewith, virtually all of Respondent's union- and nonunion-represented employees were provided Hayes/Hill questionnaires designed to gather information about their jobs. Thus, by letter dated July 17, 1980, with attached questionnaires, Respondent's then personnel director Carter Coghill wrote to employees, in relevant part, as follows:

> Your Personnel Department is undertaking a review of salary programs for all Hospital Employees. This review is being conducted with support from Hayes/Hill Incorporated, a Chicago based management consulting firm.
>
> As part of this review, we are asking employees to complete the attached questionaire relative to their jobs . . . . [G.C. Exh. 10.]

With the information derived from these questionnaires, Hayes/Hill personnel, in tandem with Respondent's personnel department, evaluated and made classification descriptions for each job. About the same time, Respondent formed a benchmark committee comprising a group of approximately 20 individuals who were employed in both management and nonmanagement, unit and nonunit positions to examine and rank some 40 to 50 technical, clerical, and general service jobs throughout the hospital. The benchmark committee had access to the questionnaires as well as separate Hayes/Hill material comprising 37 multiple choice questions with corresponding letter scores. (See G.C. Exh. 9.) With the data derived therefrom, the Hayes/Hill consultants and personnel department evaluated the remaining 400 jobs and translated the letter scores to a numerical value using a Hayes/Hill formula. The numerical score for each job was applied to a schedule which determined the pay grade for each job.

In late 1980 or early 1981, Hayes/Hill produced a summary document containing recommendations called a "map." In essence, the map was an array of job titles with corresponding pay grades which were arrived at under the Hayes/Hill point evaluation system. From time to time over the next 2-1/2 years, the map was revised by Respondent's personnel department after review and the concurrence of Hayes/Hill.

In the spring or summer of 1981, the work of unit clerks changed, apparently for reasons unrelated to Hayes/Hill. Rather, the changes in the nature of the work performed by unit clerks coincided with the introduction of a computer ordering system. Prior thereto, the unit clerks, on instructions from physicians and nurses, manually filled out order slips for such items as X-rays, blood tests, and medication for the patients. These order slips were then checked by a registered nurse or supervisor before being deposited with the appropriate department for servicing. Under the new computer ordering system, the computer readout replaced the paper order slips and the unit clerks transmitted this computerized information directly to the department. As stated by Union Business Agent Elliott, "for the first time, the unit clerks took full responsibility for the accuracy of these orders." The Union began to press for a pay increase and reclassification of unit clerks.

By letter dated November 6, 1981, Business Agent Patricia Ferguson wrote then Personnel Director Coghill

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newly discovered evidence, the motion to strike is hereby granted. *Standard Scientific*, 195 NLRB 995 (1972); see also *Sassafuin Convalescent Center*, 223 NLRB 267 (1976).

[2] Respondent's nurses are represented by the District of Columbia Nurses Association.

[3] The bargaining unit as set forth in the labor contract is as follows:

> All permanent, full-time employees (defined as those who fill a permanent position, work on a regularly scheduled basis, and work at least forty (40) hours per week or eighty (80) hours per pay period, denominated as "PF") and all permanent, part-time eligible employees (defined as those who fill a permanent position, work on a regularly scheduled basis, and work at least twenty (20) hours but less than forty (40) hours per week, or at least forty (40) hours but less then eighty (80) hours per pay period, denominated as "PE") in the job classifications attached to the Certifications of Representative issued by the National Labor Relations Board on March 31, 1975 under Case No. 5-RC-9214, and on May 16, 1975, under Case No. 5-RC-9293, and any newly created job classifications similar to, or related to, such classifications and appropriate for inclusions in the unit, but excluding all professional employees, guards and supervisors as defined in the National Labor Relations Act, as amended, part-time employees who work less than twenty (20) hours per week or less than forty (40) hours per pay period, temporary employees defined as those who fill a temporary position and normally will not work beyond the probationary period, whether full-time or part-time temporary, and all other employees.

requesting a meeting to discuss, inter alia, "additional responsibilities" of the unit clerks and "the possibilities of [their] reclassification and upgrading." (R. Exh. 2.) In attendance for Respondent was Coghill and subordinates, Gorden Garrett and Joseph Latham; the Union was represented by Ferguson and Susan Townsend, a unit clerk and shop steward. Townsend testified that this meeting represented the first time she had discussed Hayes/Hill with management. According to Townsend,[4] Coghill made reference to Hayes/Hill with regard to possible ways in which the pay rate and upgrading of unit clerks might occur. Further, the union representatives were advised that Garrett was then working on updating the unit clerk job description and Coghill promised to explain the Hayes/Hill system to the Union and employees after January 1, 1982, when the system was expected to be implemented. (See R. Exh. 2,p.B,III—Upgrading.)

By letter dated January 19, 1982, Respondent notified Union President Smiley, inter alia, that it "intends to implement as of March 7, 1982, a comprehensive program developed by Hayes/Hill Incorporated." (G.C. Exh. 12.) The planned implementation date however was not met.

In a followup letter to the December 9 meeting dated March 2, 1982,[5] to Coghill, signed by both Ferguson and Townsend, request was made for a status report on unit clerks. (R. Exh. 3.) Coghill was also reminded, inter alia, that Garrett had stated that he was updating the unit clerk's job and noted that "neither the unit clerks nor the union has received new job descriptions . . . ." (Id.)

Sometime around March 25, the identity of the management officials with whom the Union had been dealing changed. Thus, Michael Strand became "acting" and later the new director of personnel, replacing Coghill, who was no longer employed by Respondent.

Townsend and Ferguson met the new management team twice in April and once in May. Strand was accompanied by Joyce Johnson, director of nursing and Krolls, another supervisor. As testified by Strand, the participants covered "a whole variety of issues surrounding unit clerks, including the issue of pay and job classification." According to Townsend, she understood from the discussion that, when Respondent completed the job description for unit clerks, that position would be evaluated under the Hayes/Hill system.

In the meantime, back in February, Ben Elliott began his employment as business agent for the Union. Elliott was kept abreast of developments relative to unit clerks by Ferguson and Townsend. According to Elliott, the first time he discussed Hayes/Hill with Respondent was in a phone conversation with Strand in late May or early June. On that occasion, inter alia, Elliott and Strand had a brief discussion about the reclassification of the unit clerks. Elliot reiterated the Union's position, that reclassification and a pay increase for unit clerks were warranted. In turn, Strand noted, that Hayes/Hill would probably go into effect in the near future and, as such, he expected the situation regarding the unit clerks to be resolved.

However, the Union continued to press Strand to do something about the unit clerks. As stated by Strand, "The unit clerk issue was a sensitive one . . . we were all involved on emotionally as well as managerially . . . I was receiving phone calls daily as to what the status of things were . . ." A few months earlier and largely as a result of the meetings with Townsend and Ferguson, Strand had directed his staff to undertake a study of unit clerks. In connection therewith, the personnel department had access to and examined all files which contained, inter alia, Hayes/Hill questionnaires[6] and related material.

By letter to Strand dated June 16, Elliott requested "negotiations concerning a change in pay grade for all unit clerks . . . affected by the introduction of computer terminals." Further, inter alia, Elliott wrote:

> We assume that the Hayes-Hill study dealt with the issue of classification of the [unit] clerks. Please send us the relevant findings and/or recommendations of this or any other job analysis. [G.C. Exh. 3.]

In July, Strand's staff completed its study and recommended the upgrading of unit clerks and additional compensation. Strand adopted these recommendations and submitted them to his superior, Associate Administrator for Employee Resources Truman Haskell Jr. for his consideration. According to Strand, it was his "understanding" that if Haskell approved his recommendations the issues involving the unit clerks would be resolved. As such, Strand did not respond to Elliott's letter of June 16 which had requested Hayes/Hill information and negotiations.

However, Haskell rejected Strand's recommendations asserting that by using the new computer system the work of unit clerks was actually made easier. Elliott, not hearing from Respondent with regard to his request for information and negotiations, filed a grievance in letter form, dated July 20, addressed to Strand. (G.C. Exh. 4.) In the letter, the grievance was stated as follows:

> By unilaterally changing the unit clerks' jobs without an appropriate reclassification the Hospital has violated its obligations under Section 1.1 of the contract.[7] [Id.]

On December 22, Elliott and Townsend met with Respondent's attorney Edward Krill to discuss the Union's grievance. Krill pointed out that the unit clerks were about to receive a substantial increase in pay and asked

[4] *Towsend* was the only individual in attendance at the meeting to testify. She had recently become secretary of the local.

[5] All dates hereinafter refer to 1982 unless otherwise indicated.

[6] Since the initial distribution of questionnaires, Respondent has on occasion given certain employees new questionnaires to help determine whether a particular job has changed or should be reclassified. *Strand* could not recall whether the personnel department obtained new questionnaires from the unit clerks.

[7] Sec. 1.1 states: "The Hospital recognizes the Union as the exclusive representative for the purpose of collective-bargaining with respect to rates of pay, hours of work and other conditions of employment of those employees [including unit clerks] of the Hospital listed in 1.2 of the Article." (G.C. Exh. 2, p. 1.) Recently, the subject matter of the grievance over unit clerks was held to be arbitrable. See *Washington Hospital Center v. Service Employees Local 722*, 577 F.Supp. 206 (D.C. Cir. 1983).

the Union to drop the grievance. Further, Krill advised Elliott and Townsend that the Hospital intended to implement the Hayes/Hill system in 2 or 3 weeks and showed them a document listing job categories including that of the unit clerks and corresponding new salaries or grade levels. The union representatives indicated that they would recommended that the unit clerks drop the grievance and abandon any claim for backpay, if they knew when the system would take effect, and, if Krill satisfied them, in writing, that the grade and salary level for unit clerks in the document covered the unit clerks of the same grade under the contract.

The subject of Hayes/Hill vis-a-vis unit clerks came up next between Elliott and Krill in a phone conversation about January 11, 1983. Krill did not yet have the date of implementation of the system. While Krill also did not have the exact salary schedule, he informed Elliott that unit clerks would received pay increases from about $1000 to $1700 a year and represented that this amounted to about a 50-percent increase over the raises of the other classifications in the bargaining unit. Approximately 1 week later, Krill told Elliott that the Hospital had scuttled the original Hayes/Hill implementation date and, in turn, Elliott promised to see Krill at arbitration.

The arbitration hearing opened on January 26, 1983. Krill stated, inter alia, at the arbitration hearing, that the Hospital was "determined" to implement Hayes/Hill on "October 2, 1983 and not sooner." According to Townsend's uncontroverted testimony, on the second day of the arbitration hearing, the Hospital changed the job description for unit clerks.[8] Strand acknowledged that over the past 8 or 9 months, in addition to unit clerks, other groups of unit employees have been studied with some resort to Hayes/Hill material and have been reclassified. Thus, Strand testified that some 35 positions within the central supply department as well as a "significant number" of respiratory therapy employees have been reclassified.

B. *Discussion and Conclusions*

The General Counsel contends that the Hayes/Hill study or any other job analysis dealing with the classification of unit clerks is "necessary" and "relevant" to help the Union determine whether upgrading these employees with a concomitant pay increase is justified. Further, the General Counsel asserts that Respondent's evaluation of the unit clerks' positions as well as their rate of pay is a mandatory subject of bargaining and, as such, the Union is entitled to the data in its obligation to reasonably and intelligently represent bargaining unit employees. The record reveals that the Union requested this information in a letter dated June 16, 1982 (G.C. Exh. 3), and filed a grievance, in the form of a letter, more than 1 month later, when Respondent failed to respond. (G.C. Exh. 4.) The grievance was predicated on Respondent's "unilateral" introduction of a computer ordering system, which assertedly made the work of unit clerks more difficult "without an appropriate reclassification" in violation of the contract. (Id.)

On the other hand, Respondent denies that the Union is entitled to the disputed Hayes/Hill material because the system has not yet been implemented vis-a-vis bargaining unit employees. According to Respondent, "Hayes/Hill has simply produced a methodology which might be used as part of a comprehensive compensation system affecting all employees of the hospital." In any event, Respondent asserts that it has from time to time disclosed sufficient information about the study "in the Benchmark process and otherwise" to enable the Union to intelligently negotiate and represent the bargaining unit.

Insofar as the Union's request for "any other job analysis dealing with unit clerks," the record disclosed that the only such study was undertaken by the personnel department under the direction of Personnel Director Strand and the findings and recommendations thereon were rejected by higher management. Respondent maintains that it has a legitimate business reason for withholding of information dealing with contrary opinions among its management staff: "to preserve the ability of Respondent's staff to communicate openly and candidly without fear that the Union can obtain evidence of such disagreement and pit members of Respondent's staff against one another in a public forum."

I find, for reasons discussed below, that a number of representations or denials by Respondent regarding the use of Hayes/Hill is not supported by the record. Further, I find that Hayes/Hill material at least in part was utilized by the personnel department in arriving at recommendations for the upgrading and increases in pay for unit clerks. To permit proper perspective and context, a summary of the circumstances giving rise to the Union's request for information relative to Hayes/Hill and the study undertaken by the personnel department is now in order.

The record disclosed that the Hayes/Hill study was virtually completed around March 1981. About the same time, the Hospital introduced a computer order entry control system (COECS) for unit clerks. While the two events initially appeared to be unrelated, these subjects became linked by Respondent in a union-management meeting on December 9, 1981. The Union had requested this meeting in a letter dated November 6, 1981, to discuss "the possibilities of reclassification and upgrading of unit clerks with additional responsibilities [under the new computerized system]." (R. Exh. 1.)

Shop Steward Townsend's credited and uncontroverted testimony[9] disclosed that at the December meeting, in

[8] While the record is silent as to the ultimate disposition of the arbitration, it is noted that the instant unfair labor practice charges were filed on February 2, 1983, and that the Union, inter alia, contends that all the Hayes/Hill material is necessary and relevant for it to represent the unit clerks at arbitration. See fn. 7, supra.

[9] I found *Townsend* to be consistent, responsive, plausible, and in a large part corroborated. In this regard, it is noted, inter alia, that her account of the December 9 meeting comports with her minutes of that session, an exhibit offered in evidence by Respondent (R. Exh. 2). Further, her accounts of subsequent meetings with *Strand* appear to have been corroborated by the latter's testimony. As testified by *Strand*, his study "emanated out of a series of meetings that *Susan Townsend* described." For the foregoing reasons and on the basis of my assessment of her demeanor, I credit *Townsend's* testimony in all material respects.

response to the Union's concerns about the changes brought about by COECS, Personnel Director Coghill made reference to Hayes/Hill as one of two ways in which the pay grade and upgrading of unit clerks might occur. Coghill also advised the Union at that time that his staff was already working on updating the unit clerk position and promised to explain Hayes/Hill more fully in the near future, sometime after January 1982, when the system was expected to be implemented.

In January 1982, Respondent advised the Union by letter that it "intends to implement as of March 7, 1982, [the] comprehensive compensation program developed by Hayes/Hill Incorporated." (G.C. Exh. 12.) In the meantime, and as the early months of 1982 passed, Respondent had still not furnished the Union with the new job classifications and other upgrading material for unit clerks as promised at the December 9 meeting. The Union, for its part, continued to press for this material. Thus, Ferguson and Townsend, in a followup letter dated March 2, reminded Coghill, inter alia, that the Union was told at the December 9 meeting that Respondent was "upgrading the [unit] clerks' job description" but that "[n]either the unit clerks nor the union" had received this material. (R. Exh. 3.) The union representatives were particularly interested in whether these new job descriptions reflected the changes in the responsibilities of unit clerks as a result of COECS pointing out, that "[p]roper pay adjustments are, of course, of primary importance." (Id.) Again, by letter to Coghill dated March 22, Ferguson complained that Respondent had not yet delivered on the promises it made at the December 9 meeting relative to unit clerks. (R. Exh. 4.) Around the same time Coghill was terminated and replaced by Strand.

According to Strand, at the time he assumed Coghill's responsibilities, he was unaware of the issues involving unit clerks. However, as a result of meetings with Townsend and Ferguson in April and May, where, inter alia, "a whole variety of issues surrounding unit clerks, *including the issue of pay and job classification*," were discussed, Strand ordered his staff to undertake a new study (hereinafter "Strand study") to determine whether upgrading the unit clerks was warranted. As testified by Townsend, after these meetings, "it was still our understanding that when [the unit clerk] job description was complete[d], that it would be evaluated by personnel under this [Hayes/Hill] system."

As noted above, in June, the Union had requested Hayes/Hill material dealing with the reclassification of unit clerks and/or findings and/or recommendations of any other job analysis. The record disclosed that aside from Hayes/Hill the only other undertaking by Respondent on this subject was the "Strand study," which was completed in July. Strand described the "process" by his staff as follows:

> [T]hey looked at the information in our files, they looked at the new information that was provide[d] by nursing administration, and I do not recall whether they got *new position description questionnaires* from individuals or not . . . [they] examined all that data, and came up with the recommendation. [Emphasis added.]

While Strand could not recall whether the original Hayes/Hill questionnaires were updated, his testimony establishes that his staff had access to the employees' complete files. This included the job descriptions compiled under the Hayes/Hill system and, at least, the old questionnaires which admittedly were maintained by Respondent as part of an ongoing process. According to Strand, he elected not to respond in writing to Elliott's written request for this material as well as other Hayes/Hill data, because he expected the new study to be completed shortly with favorable recommendations upgrading and increasing the pay of unit clerks. As such, he expected all outstanding issues involving the unit clerks to be resolved.

As noted previously, Strand's analysis, findings, and recommendations were rejected by Haskell. In July, Elliott filed a grievance over Respondent's failure to upgrade the unit clerks.[10] The Respondent argues, inter alia, that as the Strand study was rejected this, as well as the Hayes/Hill material which has not yet been implemented, is not relevant or necessary to the Union in the exercise of its bargaining functions.

It is well settled that an employer has a "general obligation" to provide information which is reasonably necessary to a union in carrying out its collective-bargaining functions. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435-436 (1967); *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1946). This obligation is a continuing one, extending beyond contract negotiations and "applies to labor-management relations during the term of an agreement." *Acme Industrial Co.*, supra at 436; *Timkin Roller Bearing Co. v. NLRB*, 325 F.2d 746, 750 (6th Cir. 1963), cert. denied 376 U.S. 971 (1964). Whether the requested information is relevant and necessary is determined by the factual circumstances on a case-by-case basis. *San Diego Newspaper Guild v. NLRB*, 548 F.2d 683, 687 (9th Cir. 1977); *Procter & Gamble Mfg. Co. v. NLRB*, supra at 1315. However, certain types of information pertaining to mandatory subjects of bargaining (wages, hours, and working conditions of bargaining unit employees) "are so intrinsic to the core of the employer-employee relationship that such information is considered presumptively relevant." *San Diego Newspaper Guild v. NLRB*, supra. Accord: *Teleprompter Corp. v. NLRB*, 570 F.2d 4, 8 (1st Cir. 1977); *Procter & Gamble Mfg. Co. v. NLRB*, supra. Evaluation data applicable to particular jobs or wage compensation, as involved herein, has long been treated

[10] I found *Elliott* to be a credible witness. In large part, *Elliott's* testimony was corroborated by *Townsend*, who was also found herein to be a credible witness. *Elliott* testified credibly and without controvention that in efforts to resolve the union grievance attorney *Krill* told him and *Townsend*, at a meeting on December 22, that he expected the Hayes/Hill system to be implemented in 2 or 3 weeks with an increase in pay for the unit clerks. Further, about January 11, 1983, *Elliott* called *Krill* for an update and the latter, at that time, still maintained that implementation was imminent and represented that unit clerks would average wage increases from about $1000 to $1700 a year. However, about 1 week later, *Krill* retreated and told *Elliott* that Respondent had scuttled the original implementation date. *Elliott* ended that conversation by telling *Krill* that he would see him in arbitration.

as encompassing mandatory subjects of bargaining. See, e.g., *Western Massachusetts Electric Co v. NLRB*, 589 F.2d 42, 47 (1st Cir. 1978); *Dynamic Machine Co.*, 221 NLRB 1140 (1975). See also *J. I. Case Co.*, 118 NLRB 520, 521–522 (1957), enfd. 253 F.2d 149 (7th Cir. 1958); *Taylor Forge & Pipe Works*, 113 NLRB 693 (1955); *Procter & Gamble Mfg. Co. v. NLRB*, supra at 1315.

While Respondent "concedes" its "general obligation" to furnish the Union relevant information, it points out that the duties imposed by the Act are not absolute. This is so, particularly, when balanced against any legitimate assertion of confidentiality. See *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 314–320 (1979); *Johns-Manville Sales Corp.*, 252 NLRB 368 (1980). However, it is also noted that the "weight" of an employer's assertion of confidentiality is "subject to scrutiny." *Johns-Manville Sales Corp.*, supra.

According to Respondent, disclosure would tend to inhibit feedback from its staff and promote disharmony. The record is devoid of any evidence to support such fears. In any event, the identities of the supervisors and their specific recommendations could be deleted. What I find is necessary is the analysis and data on which the recommendations are predicated.

Contrary to Respondent, in the circumstances of this case, disclosure does not turn on whether Hayes/Hill was implemented in its entirety. This is so principally because, under the Hayes/Hill ongoing system, each classification is assessed relative to other positions and has already resulted in, inter alia, certain classifications being upgraded. Strand noted that among these "significant" reclassifications are some 35 positions within the central supply department, "a significant number of respiratory therapists," and some "secretarial type positions." Further, Haskell, acknowledged that under the Hayes/Hill system of compensation, each job is analyzed in relationship to every other job in the bargaining unit and "[e]ach job . . . is given a point score that is placed in relation to other jobs." The record disclosed that these point scores under a Hayes/Hill formula are substituted for letter grades. This formula, as well as other Hayes/Hill material noted below, has not yet been furnished to the Union.

As noted previously, Respondent asserts that it has already disclosed sufficient information about Hayes/Hill "in the Benchmark process and otherwise" to enable the Union to intelligently represent unit clerks. I reject this conclusion both factually and as a matter of law.

The record disclosed that the Union has been supplied with some Hayes/Hill material consisting principally of the raw questionnaires (G.C. Exh. 10), the 37 questions furnished the Benchmark committee (G.C. Exh. 9), and the "Summary Presentation of the Comprehensive Program for the Washington Medical Center." (G.C. Exh. 8.) On the other hand, without the completed questionnaires and new job descriptions generated therefrom, the answers to the 37 questions, the formula used to drive numerical values, the final "map", and adequate explanations for context, I fail to discern how the Union can make adequate comparisons in determining whether differentials for various job classifications are warranted. See *Procter & Gamble Mfg. Co. v. NLRB*, supra at 1316–1317; *J. I. Case Co.*, supra at 523. With regard to Respondent's reliance on the Union's access to the Benchmark committee as an alternative source for the requested information, the record is far from clear that any union representative served on the committee or that the Union in fact had access to this source.[11] In any event, the Board has consistently noted that the alleged availability of the requested information from other sources does not relieve an employer of its obligations to furnish such information under Section 8(a)(5). See *New York Times Co.*, 265 NLRB 353 (1982); *Borden, Inc.*, 235 NLRB 982 (1978); *Kroger Co.*, 226 NLRB 512 fn. 8 (1976), where the Board noted, "[T]he fact that the Union has recovered part of the requested information does not relieve the Employer of its duty to furnish complete information." See also *Procter & Gamble Mfg. Co. v. NLRB*, supra at 1317.

The record clearly discloses that Hayes/Hill is a viable ongoing process where employees are continuously ranked relative to their colleagues. As noted above, some classifications have already been upgraded. Indeed, Respondent's attorney noted, at the arbitration hearing, inter alia, that under Hayes/Hill "some people will move forward relative to their colleagues in the workforce and will receive what could be considered pay increases based on classification." There is no showing that Respondent has abandoned Hayes/Hill, only that it has not yet been fully implemented. The most recent target date as set forth by Respondent's attorney at the arbitration hearing was October 1983.

In these circumstances and on the total state of the record, noting particularly the relative ranking of classifications and that some unit employees have already been upgraded, I find that all Hayes/Hill material is necessary for the Union to fulfill its statutory obligation to represent the bargaining unit in general and the unit clerks in particular. Conversely, Respondent's failure to provide the requested information is a breach of its bargaining responsibility and violative of Section 8(a)(5) and (1) of the Act as alleged.[12]

CONCLUSIONS OF LAW

1. Respondent, Washington Hospital Center, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

[11] *Haskell* stated that he did not know whether any member of the Union participated on the Benchmark committee. *Strand* asserted (without corroboration) that the Union was represented, but also acknowledged that he was only "roughly" familiar with the identity of its members. While *Strand* named *Barbara Becker* as an officer of the Union and a member of the committee, he also added, "but I don't know for sure." With regard to Hayes/Hill material assertedly disclosed to President *Smiley*, it is noted, inter alia, that *Strand* could not state whether information relative to unit clerks was included. *Haskell* testified that the subject of unit clerks was raised at one meeting with *Smiley* but did not otherwise describe what transpired therewith. In any event *Haskell* testified that he disclosed the impact of Hayes/Hill to *Smiley* "only in general terms that implementation would mean an increase for certain jobs and not for others." In assessing the overall credibility of *Haskell* and *Strand*, I found them to be, inter alia, uncertain about key events and otherwise conclusionary. As such, their poor recall does not inspire confidence in the accuracy of their testimony and I place little reliance thereon.

[12] See section of this decision entitled "The Remedy" for that portion of the *Strand* study encompassed by these findings.

2. Service Employees International Union, Local 722, AFL-CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

3. All permanent, full-time employees (defined as those who fill a permanent position, work on a regularly scheduled basis, and work at least forth (40) hours per week or eighty (80) hours per pay period, denominated as "PP") and all permanent, part-time eligible employees (defined as those who fill a permanent position, work on a regularly scheduled basis, and work at least twenty (20) hours but less than forty (40) hours per week, or at least forty (40) hours but less than eighty (80) hours per pay period, denominated as "PE") in the job classifications attached to the Certifications of Representative issued by the National Labor Relations Board on March 31, 1975 under Case No. 5-RC-9214, and on May 16, 1975 under Case No. 5-RC-9293 and any newly created job classifications similar to, or related to, such classifications and appropriate for inclusions in the unit, but excluding all professional employees, guards and supervisors as defined in the National Labor Relations Act, as amended, part-time employees who work less than (20) hours per week or less than forty (40) hours per pay period, temporary employees defined as those who fill a temporary position and normally will not work beyond the probationary period, whether full-time or part-time temporary, and all other employees constitute a unit appropriate within the meaning of Section 9(b) of the Act.

4. At all times material herein, the Union has been the exclusive bargaining representative of the employees in the aforesaid appropriate unit within the meaning of Section 9(a) of the Act.

5. By refusing to furnish the Union with the information requested as alleged in the instant complaint, Respondent has failed to bargain collectively with the Union and has thereby engaged, and is engaging, in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. The aforesaid unfair labor practices affect commerce within the meanings of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in conduct violative of Section 8(a)(5) and (1) of the Act, I recommend that Respondent cease and desist therefrom and take additional affirmative action necessary to effectuate the purposes of the Act.

Having found that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to furnish all of the Hayes/Hill information requested by the Union, I recommend that Respondent be required to furnish this material in its entirety including the completed questionnaires, new job descriptions, the answers to the 37 multiple choice questions with corresponding letter grades, the formula used to derive numerical values, and the final "map."[13] Further, it is recommended that any portion of the Strand study based on Hayes/Hill material also be included. Insofar as the identity of supervisors and their recommendations can be deleted from the Strand study, I recommend that this information not be disclosed as distinquished from the analysis itself.[14]

On the foregoing findings of fact and conclusions of law, I issue the following recommended[15]

ORDER

The Respondent, Washington Hospital Center, Washington, D.C., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with Service Employees International Union, AFL-CIO as the exclusive representative of its employees in the appropriate unit by failing and refusing on request to furnish it with information relevant and reasonably necessary to the performance by the Union of its obligations as bargaining representative.

(b) In any like or related manner interfering with, coercing, or restraining employees in the exercise of their rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act.

(a) On request, provide the Union with the Hayes/Hill information requested by it for the purpose of collective bargaining.

(b) Post at its facility in Washington, D.C., copies of the attached notice marked "Appendix."[16] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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[13] Respondent has not contended, nor does it appear otherwise, that compliance therewith would be unduly burdensome. See *Equitable Gas Co.*, 227 NLRB 800, 803 (1977); *J. I. Case Co.*, supra at 523.

[14] As found herein, the Strand study involving unit clerks included access and consideration of Hayes/Hill material already in employees' files. While it is noted that Respondent rejected the recommendations of the Strand study to upgrade unit clerks, other classifications based on Hayes/Hill material were upgraded. As such, and for other reasons discussed previously, I find that all Hayes/Hill material including the Strand study to the extent that it is based thereon is necessary for the Union to fullfill its bargaining responsibilities under the Act. Cf. *General Aniline & Film Corp.*, 124 NLRB 1217 (1959).

[15] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[16] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively with Service Employees International Union, AFL-CIO, as the exclusive representative of our employees in the unit found appropriate herein by failing and refusing on request to furnish it with information relevant and reasonably necessary to the performance by the Union of its obligations as bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights under Section 7 of the National Labor Relations Act.

WE WILL furnish the Union, as the exclusive bargaining representative of our employees in the unit found appropriate here, with information heretofore requested by the Union pertaining to unit clerks which is necessary and relevant to the performance by the Union of its obligations as bargaining representative.

WASHINGTON HOSPITAL CENTER